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City Council

City of Eugene
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Eugene, Oregon 97401-2793
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Pat Farr
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Betty Taylor

December 8, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Reply Comments of the City of Eugene, Oregon in WT 99-217; CC 96-98 - Notice of Inquiry, Promotion of Competitive Networks in Local Telecommunications Markets.

Dear Secretary Salas:

Enclosed are two (2) copies of our reply comments in the above-referenced proceeding.

Very truly yours,

Nancy Nathanson

Councilor Nancy Nathanson

No. of Copies rec'd 2 of 4
List ABCDE

EUGENE

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December 8, 1999

Chairman William Kennard
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Reply Comments of City of Eugene, Oregon, in WT 99-217; CC 96-98 - Notice of Inquiry, Promotion of Competitive Networks in Local Telecommunications Markets

Dear Chairman Kennard:

The City of Eugene, Oregon is writing to express to you and the Federal Communications Commission our serious concern with regard to the comments about Eugene made by AT&T, Sprint, and ALTS in the above proceeding. This letter replies to those comments.

Before moving into the body of our reply, we are dismayed that FCC procedural rules allow the Commission to hear unfounded allegations from one side in this proceeding without notifying municipalities cited by name. Compounding this oversight in notification processes, there is the over-riding failure on the part of the industry commenters in this proceeding to recognize the jurisdictional boundaries established by Congress under the 1996 Act. Eugene is in receipt of the comments filed by the National League of Cities (NLC), of which Eugene is a member, and endorses and supports NLC's comments.

Industry Comments About Eugene

Specifically addressing the comments provided by AT&T, Sprint, and ALTS, it appears that they construe any attempt by a municipality to *manage* its rights of way as an unnecessary tier of regulation. Eugene has never sought to and does not duplicate any of the programs or procedures of the Oregon Public Utilities Commission or the Federal Communications Commission.

--While the case referred to by **AT&T** (page 15-16) was decided by one lower court in favor of AT&T, the ruling by Judge Merten was not accompanied by any written or oral opinion giving the reasons for the decision. Since industry members had attacked Eugene's ordinance on both state law grounds and on federal law grounds, it is impossible to tell whether Judge Merten even reached the Section 332(c)(3) issues raised by industry, much less determined whether Eugene had "overstepped" the bounds of Section 332(c)(3). At most, the Eugene litigation makes clear that courts provide a more than adequate forum for industry's supposed grievances, and there is no need for FCC intrusion. This case should be permitted to proceed in our courts without interference.

AT&T also mis-characterizes Eugene Code Sections 3.405, 3.410, and 7.290(1). Wireless carriers do <u>not</u> have to apply for any license if no use of the public rights of way is involved. Instead, a simple 2-line questionnaire is provided that asks for name and location of sites with the City limits. This request does

provide service (in *Eugene* alone, the number of wireline and wireless providers has doubled). The need to provide new service choices to customers must be analyzed in conjunction with the City's land use management policies. Under industry's proposal, cities would be forced to allow every company to place their wires in a building, and their antennas on the roof, all without a landowner's permission nor with any consideration of the viewshed, or other land use issues lawfully placed within municipal hands.

We simply cannot understand how the FCC has determined it has the authority to consider these issues. It would violate the basic right that a landlord, city or condominium has regarding who comes onto their property. Congress did not give the FCC the authority to essentially enter into a condemnation proceeding en masse for tens or hundreds of phone companies in every building in the country.

Eugene has difficulty understanding how the FCC can preempt state and local building codes, zoning ordinances, environmental legislation and other laws affecting antennas on roofs. Zoning and building codes are purely matters of state and local jurisdiction, which under Federalism and the Tenth Amendment the FCC may not preempt. For example, building codes are imposed in part for engineering related safety reasons. Can the FCC really speak for us in the northwest when codes vary by region, weather patterns and building type, such as the likelihood of earthquakes, hurricanes and maximum amount of snow and ice? If antennas are too heavy or too high, roofs collapse. If they are not properly secured, they will blow over and damage the building, its inhabitants or passers-by.

Similarly, zoning laws are matters of local concern which protect and promote the public health, safety and welfare, ensure compatibility of uses, preserve property values and the character of our communities. We may restrict the numbers, types, locations, size and aesthetics of antennas on buildings (such as requiring them to be properly screened) to achieve these legitimate goals, yet see that needed services are provided. This requires us to balance competing concerns, which we do every day with success in conjunction with our duly elected officials and the stakeholders of our cities--our citizens.

Cities have an 80-year history of applying and balancing zoning policies and principles. Zoning is not impeding technology or the development of our economy. In 1997, Eugene enacted a new tower zoning and siting ordinance and industry has voiced no opposition to it since its adoption and new tower facilities have been erected. There is simply no basis to conclude that for a brand-new technology (wireless fixed telephones) with a minuscule track record that there are problems to warrant FCC action.

2. Please do not permit the FCC to preempt local rights-of-way management and compensation that are essential to protect the public health, safety and welfare. By adopting the Gorton amendment, (Section 253 (d)), Congress has specifically prohibited the FCC from acting in this area. The telephone providers' complaints about rights-of-way management and fees are overblown. All in all, given the vast growth of the industry and the existence of over 38,000 local governments nationwide, there is a very small number of court cases in the three years since the 1996 Act. It may be notable to mention that while Eugene is one such city whose right-of-way ordinance is being litigated, the litigation was brought by the incumbent providers---no new provider has either joined that litigation or refused to comply with *Eugene's* rights-of-way management policies and procedures. With 38,000 municipalities nationwide and thousands of phone companies this small number of court cases shows that the system is working, not that it is broken. For every incumbent suing a city, we can show you many more who are entering into new and exciting partnerships to serve new local markets---all accomplished while complying with existing rights of way management and compensation procedures. There is simply no need or authority for FCC involvement.

Finally, we are surprised that you are weighing in with an official stance that suggests that the combined Federal, state and local tax burden on new phone companies is too high. The FCC has no authority to

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Wireless Telecommunications Bureau
Federal Communications Commission
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Mr. Thomas Frost
Vice President, Engineering Services
BOCA International
4051 West Flossmoor Road
Country Club Hills, IL 60478

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CITY OF THOMSON

"The Camellia City of the South"

December 10, 1999

Mr. William Kennard, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Comments in WT Docket No. 99-217, CC Docket No. 96-98

Dear Chairman Kennard:

The City of Thomson, Georgia, strongly opposes any attempt by the Commission to preempt the authority of cities to manage their public rights-of-way, to obtain fair compensation for their use by telecommunications companies, and to preserve local tax authority. Our primary objections concerning the preemption of local authority are listed below:

- The Telecommunications Act of 1996 (Section 253) preserves the rights of cities to manage their public rights-of-way and to receive compensation and prohibits an interpretation to the contrary.

- The lawful authority of cities to manage their public rights-of-way does not impede the development of competitive networks. Instead, it provides a fair and appropriate environment for that development.

- The telecommunications industry has not shown that their ability to grow is being impaired in any significant manner by local government's right-of-way management and tax policies.

For these reasons, I urge the Commission to respect the rights of local governments and to refrain from imposing new federal regulations that would preempt local tax policy and right-of-way management authority.

Sincerely,

Robert E. Knox, Jr.
Mayor

REK/rhb

ORIGINAL

From: Peggy Hattig <MHattig@ci.oceanside.ca.us>
To: "'bkennard@fcc.gov'" <bkennard@fcc.gov>
Date: 12/13/99 6:32PM
Subject: Letter to FCC Docket 96-98

EX PARTE OR LATE FILED

December 10, 1999

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DEC 14 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Chairman William Kennard
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 99-217, CC Docket No. 96-98

Dear Chairman Kennard:

The City of Oceanside strongly opposes any attempt by the Commission to preempt local communities' authority over their public rights-of-way, or local tax authority, as suggested in the Commission's Notice of Inquiry ("NOI") in this docket. This lawful local authority does not impede the development of competitive networks. Rather, it provides a fair and appropriate environment for that development, consistent with public safety and the principle of a fair return to the community for the resources used by telecommunications providers.

The telecommunications industries have not shown that their continuing growth is being hampered in any significant way by local right-of-way and tax policies. On the contrary, our community seeks to work together with telecom companies to establish appropriate conditions under which they may use our property, and to encourage competition in each telecom market.

The fundamental principle of federalism and the constitutional rights of local governments prohibit federal agencies from seizing local property for the benefit of private companies. And the Telecommunications Act of 1996 expressly preserves local authority over our public rights-of-way. Even if the Commission could successfully defy these local rights, however, doing so would result in serious adverse consequences for all affected communities: loss of crucial revenues that support vital public services, such as police and fire protection, as well as unmanaged chaos in the public rights-of-way. Thus, attempted federal preemption on behalf of the telecommunications industry would be not only unlawful, but also bad policy.

The Commission has recognized the importance of vigilant restraint thus far in addressing local property rights and taxation authority. We urge you to resist the temptation to impose new federal regulatory structures and to respect the rights of local communities.

Cordially,

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List ABCDE

Dick Lyon

CC: "'sness@fcc.gov'" <sness@fcc.gov>, "'hfurchtg@fcc.gov'" <hfurchtg@fcc.gov>, "'mpowell@fcc.gov'" <mpowell@fcc.gov>, "'gtristan@fcc.gov'" <gtristan@fcc.gov>